IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	
Plaintiff,	)	
vs.	)	C.A. No. 00-2041 Consolidated with C.A. No. 03-1348
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual,	)	
Defendants	)	

STIPULATION OF DISMISSAL

AND NOW COMES, Plaintiff, WRS, Inc., (hereinafter "WRS"), and Defendant Charles Von Bernuth (hereinafter "Von Bernuth"), pursuant to Fed. R. Civ. P. 41(a)(2) with the following Stipulation of Dismissal.

RECITALS

WHEREAS, WRS commenced suit against Plaza Entertainment, Inc. (hereinafter "Plaza"), Eric Parkinson (hereinafter "Parkinson"), Von Bernuth and John C. Herklotz (hereinafter "Herklotz") to recover amounts WRS alleged were owed to it by Plaza and WRS alleged were guaranteed by Parkinson, Von Bernuth and Herklotz; and,

WHEREAS, on February 20, 2007, WRS obtained a judgment in the amount of $2,584,749.03 against Herklotz which was later certified as final pursuant to F.R.C.P. 54(b) and from which Herklotz appealed to the Third Circuit Court of Appeals; and,

WHEREAS, the result of the appeal was that the judgment against Herklotz was affirmed as to liability and the judgment assessing damages was remanded so that the District

Court could grant Rule 60(b) relief to Herklotz with respect to the determination of the amount of his liability; and

WHEREAS, WRS obtained default judgments against Plaza, Parkinson and Von Bernuth which default judgments were subsequently opened as the result of Rule 60 Motions filed by those Defendants; and,

WHEREAS, by reason of opening of the default judgments, WRS and Von Bernuth face the prospect of continuing litigation in the District Court where the case has been pending for over seven years; and,

WHEREAS, it is the claim and contention of WRS that Von Bernuth, Parkinson, Plaza and Herklotz are each jointly and severally liable to WRS for the full amount of Plaza's alleged debt to WRS and WRS claims the right to recover the full amount of its debt from any of them; and

WHEREAS, it is WRS's further assertion that while Von Bernuth, Parkinson, Herklotz may each have rights of contribution *inter se*, any such right to contribution could not mature unless and until one of those defendants paid more than his proportionate share of the debt; and,

WHEREAS, Von Bernuth has represented to WRS that he has limited resources to devote to the further prosecution of his defense to the claims of WRS and that his financial circumstances are such that it is unlikely that if WRS obtains a judgment, WRS will obtain a significant recovery from Von Bernuth within the reasonably foreseeable future; and,

WHEREAS, to the extent Von Bernuth has access to funds, he has proposed to pay those funds to WRS to apply to the alleged debt rather than to spend the currently available funds on the future defense of WRS's claim; and, WHEREAS, in light of the representations made by Von Bernuth, WRS now desires to discontinue the prosecution of its claims against Von Bernuth in a manner that does not in any way impair any asserted rights that Herklotz, Parkinson and Plaza may claim against Von Bernuth;

AGREEMENT

NOW, in consideration of the foregoing, WRS and Von Bernuth hereby stipulate and agree as follows:

1. The recitals are incorporated into this agreement.

2. Von Bernuth represents and warrants to WRS and the Court that the assets that he owns, whether titled in his name or in another's name and held for him, are subject to significant other claims including a federal tax lien in excess of $150,000.00 and that he currently has no assets which would be available in the reasonably foreseeable future to devote to the satisfaction of the debt alleged to be owed to WRS.

3. That Von Bernuth has obtained from a private source the sum of $25,000.00 that he has proposed paying to WRS or which he could devote to the defense of WRS's claim.

4. In consideration of the payment recited above, and based upon his representation that if judgment is ultimately obtained by WRS, recovery of the judgment from Von Bernuth is unlikely and upon the request of Von Bernuth, WRS is amendable to entry of a Rule 41 voluntary dismissal of its claims against Von Bernuth on the following conditions:

a. Von Bernuth hereby agrees to pay to WRS the sum of $25,000.00 upon the court's approval of this Stipulation. WRS shall apply the money received from Von Bernuth to reduce the principal amount of the Plaza's debt effective as of February 20, 2007.

b. To the extent that Von Bernuth has filed pleadings that can be characterized as asserting counterclaims against WRS, Von Bernuth does by his joinder in this Rule 41 Stipulation seek the Court's approval of the voluntary dismissal with prejudice any and all such counterclaims;

c. WRS does not release its claims against Von Bernuth by entering into this Stipulation and accepting the payment offered; however, in light of the unlikelihood of recovery against Von Bernuth, WRS on behalf of itself, its successors and assigns hereby agrees not to sue either directly or indirectly Von Bernuth concerning his alleged obligations to WRS and further agrees not to assign its claim or participate in any way in any attempt by any other party to sue on said alleged obligation.

d. That by entry into this Stipulation and by virtue of the payments made pursuant to the Stipulation, Von Bernuth agrees that the voluntary dismissal of the action against Von Bernuth by WRS pursuant to this Stipulation and WRS's covenant not to sue Von Bernuth, shall not in any way impair any rights Herklotz, Parkinson and Plaza ever had, now have or hereafter may have against Von Bernuth in any way related to Plaza, whether for indemnification, contribution or direct action, and whether or not set forth in the cross claims by Herklotz that were severed and transferred to California for disposition. All of Herklotz' rights and remedies (to whatever extent they could have survived the dismissal with prejudice of Herklotz' claims entered by the United States District Court for the Central District of California on September 26, 2007) as well as any rights and remedies of Parkinson and Plaza shall be retained and shall have the same viability and be subject to the same defenses (if any) with respect to any potential claim or existing claim held by Herklotz, Parkinson and Plaza as such claims would have in the absence of this Stipulation.

e. This dismissal of claims shall not impair any of WRS's rights and remedies against Herklotz, Parkinson and Plaza including expressly the existing final determination of Herklotz' liability as a guarantor of Plaza's debt to WRS. It is the intent of Von Bernuth and WRS that approval of the Stipulation of Dismissal with notice to Herklotz, Parkinson and Plaza shall expressly preserve the existing judgment of liability in favor of WRS and against Herklotz as well as WRS's claims against Parkinson and Plaza and if for any reason the Court would determine that it does not then this Stipulation shall be of no effect and shall be rescinded.

f. That the payment of funds hereunder and the dismissal of the claims and actions as set forth herein is not intended to be and shall not be construed to be any admission of liability by Von Bernuth, nor shall it be construed as a compromise of a disputed claim. Rather, this Stipulation is an acknowledgement by each of the parties hereto, (1) that the further of prosecution of the claims and defenses of the parties to the Stipulation will not be financially beneficial to the parties to the Stipulation and (2) that it is in the parties' mutual interest that the funds being paid pursuant to this Stipulation be used to reduce the debt claimed by WRS rather than be used up in the continued defense of the action. For these reasons, the dismissal will benefit the parties to this Stipulation as well as Herklotz, Parkinson and Plaza.

g. That notwithstanding his dismissal from this action, Von Bernuth agrees to comply with reasonable discovery requests by WRS, Herklotz, Parkinson and Piaza, including providing testimony at deposition or trial as long as the party seeking the discovery agrees to bear reasonable expenses relating to the discovery, including travel expenses if travel is required.

5. The parties to this Stipulation hereby expressly condition its effectiveness and enforcement on the Court's approval of the terms of the Stipulation without modification.

IN WITNESS WHEREOF, the parties, by and through their respective counsel, hereby execute the Stipulation and request the Court to enter the order confirming same.

9/19/2008
Date

Thomas E. Reilly, Esq.
Counsel for WRS, Inc.

9/19/2008
Date

James R. Walker, Esq.
Counsel for Charles von Bernuth

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Defendants	)	

ORDER OF COURT

AND NOW to wit this ______ day of ____________, 2008, upon consideration of the Stipulation of Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(2) by Plaintiff WRS, Inc. and Defendant Charles Von Bernuth, by their respective counsel, it is hereby ORDERED, ADJUDGED and DECREED that the Stipulation of Dismissal is hereby Approved. The claims of WRS, Inc. against Charles Von Bernuth shall be deemed to be voluntarily hereby dismissed without prejudice, with plaintiff having covenanted on behalf of itself and its successors and assigns not to sue against Von Bernuth on those claims. Any claims asserted by Charles von Bernuth against WRS howsoever denominated in the pleadings shall be and are hereby deemed to be dismissed with prejudice. The Stipulation and the entry of this order of dismissal shall not in any way prejudice the claims of John Herklotz, Eric Parkinson and Plaza Entertainment, Inc. as to the Von Bernuth and is entered expressly preserving WRS's claims against John Herklotz, Eric Parkinson and Plaza Entertainment, Inc. for joint and several liability for the full amount of the Debt of Plaza Entertainment, Inc.

By the Court

____

William L. Standish, J.